

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WILLIAM JEFFREY NOBACH,
JACOB NOBACH, SHALEY NOBACH,
JEFFREY NOBACH, JR., and CAMERON
NAGY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TONYA SUE DAVIS, f/k/a TONYA SUE
BEARDSLEY,

Respondent-Appellant.

UNPUBLISHED
July 26, 2007

No. 275899
Gratiot Circuit Court
Family Division
LC No. 05-006862-NA

Before: Murphy, P.J., and Zahra and Servitto, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

This family first came to the attention of the Department of Human Services in 2002 because of domestic violence between respondent and her live-in partner, Marc Nagy. The children were removed from her care, and respondent received extensive and exhaustive services directed toward reunifying the family. All of the children were eventually returned to respondent's care, Cameron by the Department of Human Services, and the other four children by their father. Soon after the court terminated its jurisdiction in that matter, respondent mother resumed her relationship with Mr. Nagy, and when this case was initiated in May 2005, she was living with him in Gratiot County. The instant case is similarly founded upon allegations of domestic violence and respondent's failure to protect the children.

The trial court did not clearly err by finding at least one statutory ground for termination of respondent's parental rights was established by clear and convincing evidence. MCL 712A.19b(3); MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The conditions of adjudication were domestic violence occurring in the presence of the children and inflicted upon William and Jeffrey and respondent mother's failure to protect the children. Although respondent mother terminated her violent relationship with Mr. Nagy, the core concern of failure to protect the children continued to exist. In parenting times, she was completely

unable to protect the children from each other, and the visits were marked by chaos and verbal and physical abuse between the children. According to Dr. Simons, who evaluated respondent mother in September and October 2005, she did not see her role as protecting the children. Given respondent's failure to benefit from exhaustive services in the previous proceedings, and also considering the testimony of Dr. Simons that respondent was not likely to benefit from further services and was not capable of protecting the children from each other or others who would harm them, the trial court did not clearly err by finding that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i).¹

Termination was also appropriate under MCL 712A.19b(3)(g) and (j). Respondent failed to provide proper care and custody for the minor children by failing to protect them from domestic violence. The same evidence indicating that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the ages of the children, MCL 712A.19b(3)(c)(i), equally indicates that there is no reasonable expectation that respondent mother will be able to provide proper care and custody for the children within a reasonable time considering their ages, MCL 712A.19b(3)(g). And there is a reasonable likelihood that the children will be harmed, at least by each other, if returned to the care of respondent. MCL 712A.19b(3)(j).

Respondent mother complains that termination was improper because no services directed toward reunification were offered in this matter. In general, the petitioner is required to make reasonable efforts to rectify the conditions that caused a child's removal by adopting a service plan. MCL 712A.18f(4). In the case of *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000), this Court, citing MCL 712A.18f(1)(b), noted that services are not required in all situations; however, the petitioner must justify a decision not to provide services to a particular family. The foster care worker, Mr. Minarik, explained that he initially ordered a full psychological evaluation of respondent mother in order to attempt to determine what was needed to reunify the family, given the exhaustive services provided in the relatively recent past and the similar nature of the problems giving rise to the instant case. He did not order other services, except for counseling, which was provided at respondent's request. After receiving the psychological evaluation on December 8, 2005, Mr. Minarik asked the court to change the permanency goal to termination of parental rights. The court did so following the next dispositional review hearing. It appears in the given circumstances that the petitioner reasonably and promptly sought to determine what services would be appropriate, and then promptly sought termination upon receiving information indicating that services were unlikely to be beneficial. This explanation for petitioner's failure to offer services appears reasonable, and we cannot fault the worker's focused approach under the circumstances. Moreover, we perceive no unfairness because respondent had already received the benefit of exhaustive services in the Isabella County case ending only 18 months before the instant matter began. Under the particular circumstances

¹ We conclude that MCL 712A.19b(3)(c)(ii) was not an appropriate ground for the termination of respondent's parental rights because no new condition giving rise to jurisdiction was specified and none clearly appears in the record. Therefore, we do not rely upon this statutory subsection in affirming the termination of respondent's parental rights.

of this case, the failure of the agency to provide services directed toward reunification does not supply reason to overturn the termination of parental rights.

Respondent also complains that the court relied on the psychological evaluation by Dr. Simons as a “springboard” for termination while dismissing that of Mr. Fabiano. When applying the clearly erroneous standard of review in child protective proceedings, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses. *In re Miller, supra* at 337. Our review of the record indicates that the trial court’s express rejection of Mr. Fabiano’s conclusions was amply justified. Dr. Simons cited numerous ways in which Mr. Fabiano’s evaluation of respondent mother did not comply with accepted guidelines, the most glaring being his failure to observe the children or to observe respondent mother with the children. This important point becomes critical given testimony from multiple witnesses that the visits were violent, chaotic and uncontrolled, and according to Dr. Simons, the most violent parent-child observations she had seen in decades of practice. The record supplies no reason to question the trial court’s credibility determination.

Finally, the trial court did not clearly err by finding that termination of respondent’s parental rights was not clearly contrary to the best interests of the children. MCL 712A.19b(5). According to their therapist, the children have minimal attachment to their mother, whom they do not perceive as able to protect, nurture, or care for them. They are now beginning to have a more normal pace of development and to experience some social and academic successes. The children’s therapist opined that the children would regress if placed with respondent mother. Even if she could benefit from services, he felt that it would be too late because the children would always perceive her as a part of the horrors they had experienced. The children have extreme needs that require extraordinary skills for caregivers. Respondent’s parenting abilities, however, were observed to be markedly impaired. This record supplies no evidence that termination of respondent’s parental rights is clearly contrary to the best interests of the children.

Affirmed.

/s/ William B. Murphy
/s/ Brian K. Zahra
/s/ Deborah A. Servitto